No. 02-609

Supreme Court, U.S.
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In The
Supreme Court of the United States

ERIC RINGSRED, AN INDIVIDUAL,

Petitioner,

vs.

(1) CITY OF DULUTH, A MUNICIPAL CORPORATION; AND THE FOLLOWING CITY OFFICIALS INDIVIDUALLY AND IN THEIR OFFICIAL CAPACITIES: (2) GARY L. DOTY, MAYOR; (3) CYNTHIA ALBRIGHT, ASSISTANT CITY ATTORNEY; (4) BRYAN BROWN, CITY ATTORNEY; (5) ROBERT ASLESON, ASSISTANT CITY ATTORNEY; (6) JOHN SCHWEIGER, SPECIAL PROJECTS MANAGER; (7) JOHN SMEDBERG, ASSISTANT CITY ATTORNEY; (8) DULUTH ECONOMIC DEVELOPMENT AUTHORITY AND ITS DIRECTOR, CYNTHIA ALBRIGHT, INDIVIDUALLY AND IN HER OFFICIAL CAPACITY; (9) TEAM DULUTH; (10) SOFT CENTER-DULUTH, INC.; (11) MICHAEL MCNAMARA; (12) THE DULUTH AREA CHAMBER OF COMMERCE AND (13) ITS CEO DAVID ROSS,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

GOVERNMENT RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Did the lower court correctly hold that the Minnesota Environmental Rights Act does not create a liberty or property interest protected by the procedural due process clause of the Fourteenth Amendment?

Did the lower court correctly hold that the *Rooker-Feldman* doctrine presented a subject matter jurisdictional bar to Ringsred's First Amendment claim?

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STATEMENT OF THE CASE

The matter *sub judice* has as its genesis a redevelopment project in a portion of downtown Duluth. This project is known variously as the "Soft Center Project" or the "Technology Village" and consists of an office complex located on Superior Street, a parking ramp located on First Street, and a skywalk which to date has not been built. In an effort to stop this project Eric Ringsred commenced an action in the State of Minnesota District Court, St. Louis County, Sixth Judicial District, in September of 1998. *See, State of Minnesota by Eric Ringsred v. City of Duluth, et al.*, 1999 WL 618613 (Minn.App., August 17, 1999); St. Louis County File No. C3-98-601186. In that state action Ringsred sought to prevent the demolition of various structures located in downtown Duluth, Minnesota, which were slated for removal as part of the Soft Center Project. Ringsred asserted his claim pursuant to the Minnesota Environmental Rights Act ("MERA"). *Minn.Stat.Chpt. 116B.* He also sought the recognition of downtown Duluth as a natural resource. The Report and Recommendation of Magistrate Judge Erickson contains a full statement of the background facts of this litigation and will not be repeated here. *Docket No. 118.* However, Government Respondents will summarize the state court proceedings because it is the fairness of these proceedings which form the essential core of the questions presented for review.

Trial commenced in the state district court on September 24, 1998, and concluded October 2, 1998. *Appellants' Appendix before the Eighth Circuit Court of Appeals at 102-146, Findings of Fact, Conclusions of Law, Order for Judgment.* The state trial court found that the Soft Center Project consisted of the construction of the office

building and the associated parking ramp and skywalk system. It further concluded that this location was within an area of downtown Duluth which was eligible for protection under state law as an historic resource. The court concluded that the evidence presented at trial provided the necessary factual basis for an environmental review, and the court performed the review required by MERA. Ultimately the trial court concluded that no feasible alternative to demolition existed. Thus, while Ringsred was successful in achieving recognition of a portion of downtown Duluth as an historic resource protected under MERA, he was unsuccessful in halting the demolition of the buildings on Superior and First Streets which were slated for removal as part of the Soft Center Project.

Ringsred appealed to the Minnesota Court of Appeals which affirmed the district court. *State of Minnesota by Eric Ringsred v. City of Duluth, et al.*, 1999 WL 618613 (Minn.App., August 17, 1999). In his state court appeal Ringsred failed to assert a procedural due process challenge. While his state court appeal was pending, the buildings slated for demolition and located on Superior Street were demolished. The First Street buildings were scheduled for demolition but had not yet been demolished.

On December 28, 1998, while his appeal to the Minnesota Court of Appeals was pending, Ringsred returned to the state district court and sought to enjoin demolition of the First Street buildings. *Docket No. 51, Ex. 3.* He claimed that the buildings were historical resources and that the appropriate environmental review had not been conducted. He asserted this argument even though the state district court, in its Findings and Conclusions, had determined that the trial served as an appropriate review

of the relevant issues. On that same date, the state district court denied Ringsred's motion. In its Memorandum the district court noted that "Plaintiff has failed to comply with the requirements of Rule 65 of the Minnesota Rules of Civil Procedure . . . Plaintiff has submitted no affidavit whatsoever in support of his claim of need for the Temporary Restraining Order. Plaintiff has submitted no sworn factual allegation of non-compliance with this Court's order of October 5, 1998." *Docket No. 51, Ex. 4, pg. 3/3.* Demolition of the First Street buildings began on the same date. Ringsred did not appeal.

A year later, Ringred returned to the state district court. This time he moved for an order to show cause finding the City of Duluth, DEDA, Mayor Gary Doty, Karl Nollenberger, Darrell Lewis and A&L Development, Inc. in contempt of court. *Docket No. 51, Ex. 6.* In his motion Ringsred alleged contempt of the judicial process, and violation of the Order. He claimed various procedural irregularities with regard to the trial and for a third time challenged the propriety of the demolition of the First Street buildings. This time he alleged that the demolitions proceeded in violation of various state laws related to bidding practices and local permitting requirements. His motion was denied in an Order filed January 10, 2000. Ringsred did not pursue an appeal.

Nine months later Ringsred commenced the action *sub judice* in which, for the second time, he raises allegations of procedural irregularities and for the fourth time challenges the demolition of the First Street buildings. This time, however, he claims a property interest in the historic district and claims that the demolition of the First Street buildings deprived him of that property interest

without due process. He further claims a First Amendment violation arising from the procedural irregularities allegedly occurring during the state trial, which he failed to raise during his state court appeal.

In his Complaint he again asserts all of the allegations which formed the basis of the contempt proceedings before the state district court. He pursued the action as a civil rights claim and relied upon the procedural mechanism set forth in 42 U.S.C. § 1983. He sued on his own behalf and on behalf of his family and the State of Minnesota. Ringsred's wife, Deborah Ringsred, also sued.[1] The Complaint was divided into five Counts and pled in a confusing manner. Generally, in the First Count Ringsred asserted a procedural due process challenge to the same state court proceedings which were the subject of his appeal to the Minnesota Court of Appeals; the Second Count was essentially a claim asserting an Equal Protection Challenge under the Fourteenth Amendment to the United States Constitution and challenged the manner in which public funds were spent in support of the Soft Center Project; the Third Count alleged violations of various state laws and Ringsred relied upon his status as a taxpayer to pursue this unidentified cause of action; the Fourth Count challenged various litigation tactics in the state proceeding as violative of First Amendment guarantees; in the Fifth Count Ringsred asserted unidentified claims on behalf of his family.

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[1] The Ringsred children were dismissed as parties on April 25, 2001. *Docket No. 52.*

The Defendants included a number of individuals, several non-profit corporations and two governmental entities. For simplicity the parties and district court divided the Defendants into three groups as follows: Defendants City of Duluth, Gary L. Doty, Cynthia Albright, Bryan Brown, Robert Asleson, John Schweiger, John Smedberg, and Duluth Economic Development Authority were identified as the "Government Defendants."

Defendants Team Duluth, Duluth Area Chamber of Commerce and David Ross, were identified as the "Chamber Defendants."

Defendants Soft Center-Duluth, Inc. and Michael McNamara were identified as the "Soft Center Defendants."

Ringsred asserted the existence of a property right in the historic district, sought monetary damages for the alleged harm caused to this property interest by the demolition of the First Street buildings, sought damages for alleged harm caused by the way the Soft Center Project was being managed, and in his prayer for relief asked the federal court to interfere in the state court's administration of its orders.

Government Defendants each filed their Separate Answers and on April 24, 2001, Government Defendants filed their Motions to dismiss or for summary judgment. *Docket No. 48.* All Government Defendants sought dismissal pursuant to Rule 41(b), Fed.R.Civ.P. arguing that the Complaint violated Rule 8, Fed.R.Civ.P. In the alternative, these defendants challenged subject matter jurisdiction and sought dismissal pursuant to Rule 12(b)(1), asserted that the Complaint failed to state claims upon

which relief could be granted and sought dismissal pursuant to Rule 12(b)(6). Those Government Defendants sued in their individual capacity also sought summary judgment pursuant to Rule 56, Fed.R.Civ.P. and asserted the qualified immunity defense.

All dispositive motions as well as other related non-dispositive motions of a procedural nature were referred to Magistrate Judge Raymond Erickson for his report and recommendation. On October 22, 2001, Magistrate Erickson issued his Report and Recommendation granting Government Defendants' motion to dismiss pursuant to Rule 12(b)(1) and (6). Magistrate Erickson did not address Government Defendants' summary judgment motion deeming it moot given the recommendation to dismiss on jurisdictional grounds.

Plaintiffs objected to the Report and Recommendation On November 26, 2001, Judge Richard Kyle overruled the objections, adopted the Report and Recommendation dismissed the claims against the Government Defendants with prejudice, dismissed the state claims without prejudice, and granted the remaining defendants their motions for summary judgement. *Docket No. 126.*

Ringsred appealed to the Eighth Circuit Court of Appeals. He limited his appeal to the dismissal of those claims asserted in the First and Fifth Counts of the Complaint. In an unpublished decision the Eighth Circuit affirmed, *per curiam*. This petition followed.

SUMMARY OF ARGUMENT

The Minnesota Environmental Rights Act does not create a liberty or property interest. The lower court correctly concluded that Ringsred lacked standing to pursue a procedural due process claim in the absence of such liberty or property interest.

Because Ringsred's First Amendment claims were a poorly disguised effort to challenge the decisions of the Minnesota Courts, the lower court properly concluded that the *Rooker-Feldman* doctrine served as a subject matter jurisdictional bar.

ARGUMENT

Because The Minnesota Environmental Rights Act Does Not Create Liberty Or Property Interests The Federal Courts Lacked Subject Matter Jurisdiction To Entertain Ringsred's Section 1983 Claims.

The Petitioner has incorrectly articulated the holding of the lower court. Ringsred believes the lower court held that a public interest litigant is not entitled to procedural due process as guaranteed by the Fourteenth Amendment to the United States Constitution. The lower court did not so hold; rather, it held that it lacked subject matter jurisdiction to entertain the Section 1983 claim because the state law relied upon by Ringsred did not create a liberty or property interest.

The supporting reasoning is found in the Magistrate's Report and Recommendation which was adopted by the District Court without modification. In his Report and Recommendation, Magistrate Erickson held that the court

lacked subject matter jurisdiction because "Ringsred's claim does not survive the first prong of the analysis, as we find no property, or liberty interest, which, under the circumstances presented, was personally held by Ringsred." *Appendix to Petition at pg. 22.*

In his Petition before this Court Ringsred ignores the precedents of this Court which set forth the elements necessary to support a due process claim actionable pursuant to 42 U.S.C. § 1983. Section 1983 does not provide a remedy for abuses that do not violate Federal law. *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 120, 112 S.Ct. 1061, 1065 (1992). Here, Ringsred seeks review of the dismissal of his due process claim.

This Court examines procedural due process question in two steps. The first inquiry consists of determining whether there exists a liberty or property interest which the defendant has denied to that plaintiff. *Kentucky Dept. of Corrections v. Thomson*, 490 U.S. 454, 460, 109 S.Ct. 1904, 1908 (1989); *Board of Regents of State Colleges v. Roth*, 408 U.S. 565, 571, 92 S.Ct. 2701, 2706 (1972). "[T]he second examines whether the procedure attendant upon that deprivation were constitutionally sufficient." *Kentucky Dept. of Corrections*, 490 U.S. at 460, 109 S.Ct. at 1908. The lower court did not reach the second prong of the inquiry because it concluded that Ringsred's claim failed the first prong of the inquiry. *Appendix to Petition, pgs. 22-23.*

"The types of interests that constitute 'liberty' and 'property' for Fourteenth Amendment purposes are not unlimited; the interest must rise to more than 'an abstract need or desire' and must be based on more than 'a unilateral hope.'" *Kentucky Dept. of Corrections*, 490 U.S. at 460, 109 S.Ct. at 1908. "An individual claiming a protected

interest must have a legitimate claim of entitlement to it." *Id.*

The lower court did not, as Ringsred argues, conclude that a public interest litigant is not entitled to the protections of due process. Rather, it concluded that MERA grants to individuals the right to litigate matters of public interest, but does not create in that particular litigant a personal liberty or property interest. The lower court properly noted that the claim pursued by Ringsred in the state court was pursued on behalf of the State of Minnesota and not in Ringsred's individual capacity. The lower court also properly noted that a State is not entitled to protection under either the Fourteenth Amendment, or Section 1983. *Appendix to Petition at pg. 23, n. 16.* While it is undisputed that a liberty or property interest may be created by state law, *Kentucky Dept. of Corrections*, 490 U.S. at 460, 109 S.Ct. at 1908, the state law which Ringsred identifies as the source of his asserted personal liberty or property interest does not in fact create such an interest. Ringsred fails to cite to any authority supporting the proposition that the Minnesota Legislature, in enacting MERA, intended to vest in an individual pursuing a claim under the Act a property or liberty interest. He in fact ignores this issue and instead confuses the basis upon which the lower court dismissed his due process claims with the reasons for the dismissal of his First Amendment claim.[2]

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[2] Ringsred attempts to demonstrate the existence of a property right which is personal to him by citing to a leasehold interest he held in one of the buildings demolished for the project. He fails to advise this Court that the leasehold interest in question was not located in any o

(Continued on following page)

Instead he argues that the decision of the lower court ignores this Court's decision in *Logan v. Zimmerman Brush Co.*, 455 U.S. 432, 102 S.Ct. 1148 (1982). The reliance on *Logan* is misplaced.

Logan involved a plaintiff who was denied a post-termination proceeding as the result of the state court's statutory interpretation. The plaintiff challenged the fairness of the state's statutory scheme. The Supreme Court held that the state's procedural scheme served to deprive the plaintiff of procedural due process violative of federal constitutional guarantees. *Id.*, 455 U.S. at 436-37, 102 S.Ct. at 1158-59. The plaintiff did not argue as Ringsred attempts to do that the state law created a property or liberty interest. Instead the interest at issue in the state proceeding was a property interest in his employment. The question presented in the federal court was whether the state proceeding provided a fair process for the resolution of the dispute over the loss of his property interest in employment. The holding in *Logan* is not precedential here because the issues presented and the context in which they arose are unrelated to the asserted interest claimed by Ringsred. Ringsred has failed to demonstrate that the decision below contravenes the holding of *Logan*.

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the structures which he claims were demolished in violation of the state court order. Nor does he articulate how such an interest in and of itself is a property interest in an historic district which is protected by the United States Constitution. His failure to present an accurate assertion with regard to this property interest and his failure to clarify how this asserted leasehold interest creates a property interest in public interest litigation serves as a basis to deny the petition. *See, Supreme Court Rule 14(i)(4).*

Even if the lower court had concluded that a liberty or property interest existed in this public interest litigation, dismissal was appropriate because Ringsred failed to challenge the alleged procedural irregularities in the state court. It is not enough for a plaintiff to demonstrate that a state law creates rights for which procedural protections are afforded. A plaintiff asserting a procedural due process claim must also challenge the adequacy of state procedures. *Hudson v. Palmer*, 468 U.S. 517, 104 S.Ct. 3194, 3204 (1984). Even if the adequacy of those procedures is challenged, a plaintiff is barred from asserting these claims in federal court if they failed to raise the challenge in the state proceeding. *Migra v. Warren City School Dist. Bd. of Ed.*, 465 U.S. 75, 104 S.Ct. 892, 898 (1984).

Here, Ringsred, unlike the plaintiff in *Logan*, did not challenge the adequacy of the state procedures, nor if such inadequacies existed, did he pursue them during the pendency of the state proceedings. Thus, his cause of action fails to satisfy the second question of the procedural due process test.

Ringsred has failed to demonstrate that the dismissal of his due process claim is inconsistent with this Court's precedent and has failed to demonstrate conflict with other circuits. His petition, to the extent that he seeks review of his procedural due process claim, should be denied.

The Lower Court Correctly Applied The *Rooker-Feldman* Doctrine And Properly Dismissed The First Amendment Claim On Jurisdictional Grounds.

Ringsred argues that the lower court dismissed his First Amendment claim because he lacked a liberty or

property interest sufficient to pursue such a claim. This argument ignores the basis upon which the lower court concluded that it lacked subject matter jurisdiction over the First Amendment claim and presents a mistaken assertion that the lower court failed to recognize a right to pursue litigation as an aspect of the First Amendment right to petition for the redress of grievances.

In his Report and Recommendation Magistrate Erickson specifically recognized that Eighth Circuit precedent indisputably recognizes a constitutional right of access to the Courts and cited *Harrison v. Springdale Water & Sewer Commission*, 780 F.2d 1422 (8th Cir. 1986). *Appendix to Petition, pg. 27.*

However, the lower court held that Ringsred's claims could not be pursued in federal court, not because a right protected by the First Amendment does not exist, but because the allegations which supported this claim were already the subject of state court orders. Thus, the lower court concluded that the *Rooker-Feldman* doctrine deprived the federal court of subject matter jurisdiction over this claim.[3] *See, District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923).

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[3] Ringsred does challenge the alternative basis upon which the lower court dismissed this claim. As with the procedural due process claim, the court viewed Ringred's interest in the state litigation as representational and foreclosed by the Eighth Circuit decision in *Curtis v. Federal Deposit Insurance Corp.*, 866 F.2d 255 (8th Cir. 1989).

This doctrine presents a jurisdictional bar to constitutional challenges brought in federal court that are inextricably intertwined with claims asserted in state court. *Charchenko v. City of Stillwater,* 47 F.3d 981, 983 (8th Cir. 1995).

Here, Ringsred is using Section 1983 as a platform for his constitutional challenge to the fairness of the proceedings in the state court. *Rooker-Feldman* prohibits federal appellate review of state court proceedings and a litigant cannot circumvent the doctrine by recasting a lawsuit as a § 1983 action. *Keene Corp. v. Cass*, 908 F.2d 293, 297 (8th Cir. 1990). If the federal challenge is "inextricably intertwined" with specific claims already adjudicated in state court, the federal court lacks jurisdiction. *Lemonds v. St. Louis County*, 322 F.3d 488 (8th Cir. 2000).

Magistrate Erickson correctly identified the relationship between the Section 1983 claims and the state court proceedings as follows:

> The intertwining of Ringsred's current claims, and those he advanced in the State Court proceeding, cannot be seriously contested. If, as Ringsred continues to allege, the Defendants have violated the terms of a State Court Judgment, we can see no reason to allow Ringsred to ignore that Judgment, with impunity, and proceed with the same claims in a Section 1983 vehicle in Federal Court, in order that he may seek monetary damages, in substantial sums, which were unavailable to Ringsred in the State Court, for conduct that the State Courts found to be complaint [sic] with the State Court's Injunction, and with the governing law. While Ringsred may well be disappointed in the ruling of the Minnesota Courts, we do not sit as a Court of Appeals

> on State Court matters. Ringsred had full access to the State Court, and he exhausted his avenues for relief, from the State Court's Judgment, to the extent that he then felt was warranted. To allow litigants to engage in a successive Section 1983 claim, based on no more than their disagreement with an underlying State Court ruling, would effectively disembowel the *Rooker-Feldman* doctrine.

Report and Recommendation, pgs. 39-40.

Ringsred has failed to demonstrate that the dismissal of his claim on this jurisdictional ground conflicts with the decision of another circuit or with a relevant decision of this Court. Therefore, to the extent he seeks review of the dismissal of his First Amendment claim, the petition should be denied.

CONCLUSION

Ringsred has failed to demonstrate that there exists grounds for review as set forth in Rule 10(a), Supreme Court Rules. For all of the foregoing reasons, Government Respondents respectfully request that this Honorable Court deny the Petition.

Respectfully submitted,

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